

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

№ 1:05cr01849-15 JH

DANA JARVIS, et al,

Defendants.

**DEFENDANT HOTHAN'S MOTION TO DISMISS FOR VIOLATION OF
RIGHT TO TIMELY SENTENCING**

DEFENDANT MATTHEW HOTHAN, in support of his *Motion to Dismiss*, states:

1. Ever since 8 September 2005, defendant has been continuously incarcerated, a span of almost thirty-three (33) months.

2. On 6 June 2007 defendant changed his plea to guilty. Doc 1000. The lower end of the guideline range is not expected to exceed thirty-three (33) months.

3. On 4 April 2008, defense counsel informed the prosecuting attorney by electronic mail of concern over this excessive delay. *See exhibit 1 (email)*

4. To date no response has been received from either the prosecutor or the probation officer assigned to this case regarding this excessive delay.

5. Rule 32(a) (1) of the Federal Rules of Criminal Procedure, provides that sentence must be imposed "without unreasonable delay."

6. Extreme delay may cause a deprivation of the right to speedy trial. *See Pollard v. United States*, 352 U.S. 354, 361, 77 S.Ct. 481, 1 L.Ed.2d 393 (1957); *United States v. Sherwood*, 435 F.2d 867 (10th Cir. 1970), *cert. denied*, 402 U.S. 909, 91 S.Ct. 1381, 28 L.Ed.2d 649 (1971).

7. If there has been an unreasonable delay, and if that delay results in prejudice to the defendant, then a violation has occurred. *United States v. Juarez-Casares*, 496 F.2d 190 (5th Cir. 1974).

WHEREFORE Defendant Hothan requests that the court:

A. Dismiss the proceedings against him with prejudice for deprivation of his constitutional right to speedy trial; and,

B. Grant such further relief as justice requires.

/s/ *Electronic Signature*

Stephen D Aarons

Counsel for Defendant Hothan

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Certificate of Service

A copy of this motion has been provided electronically to opposing counsel:

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/s/ Stephen D Aarons

Counsel for Defendant Hothan